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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,

Petitioner,

v.

JEROME SAKLAD,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Whether the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, as amended ("ERISA") preempts a state law which creates both substantive and procedural rights in third parties which are not recognized by ERISA and which are inconsistent with ERISA's exclusive civil enforcement scheme.

B. Whether ERISA preempts a state law which does not "expressly refer to" ERISA plans but which encompasses both ERISA and non-ERISA plans.

C. Whether a state garnishment exemption "relates to" an employee benefit plan or merely "relates to" employee benefits.

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IN THE

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OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,

Petitioner,

v.

JEROME SAKLAD,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

PETITION FOR WRIT OF CERTIORARI

Standard Insurance Company ("Standard")[1] respectfully petitions this Court for a writ of certiorari to review the final judgment of the Court of Appeals of the State of Oregon in this case.

The Oregon Court of Appeals held that, as long as ERISA plans are not singled out (i.e., the state law encompasses both ERISA and non-ERISA plans), the states may enforce exemption statutes which prevent an ERISA

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[1] All parties to the proceeding below are listed in the caption to this petition. Standard Insurance Company has no parent companies or subsidiaries (other than wholly owned subsidiaries) to be disclosed under Sup. Ct. R. 29.1. In addition, at all times relevant hereto, Standard was a fiduciary with respect to the Master Plating, Inc. Benefits Plan ("Master Plating Plan") and the Industrial Electronics Engineers Benefits Plan ("IEE Plan").

plan from collecting money judgments against a defrauding welfare benefit plan participant. This holding effectively creates substantive rights in third parties (e.g., welfare benefit plan debtors) which are not recognized by ERISA's civil enforcement scheme. Specifically, the Oregon Court held that a state garnishment exemption for disability benefits was not preempted by ERISA where the exemption did not single out ERISA plans for special treatment. It did so, apparently believing that Congress meant that *exemptions*, not just garnishment procedures, are purely matters of state law. This holding was based on an incorrect application of prior holdings of this Court, was at odds with decisions in state and federal courts, created substantive rights in third parties not recognized by ERISA and which are inconsistent with ERISA's exclusive civil enforcement scheme, destroyed the uniformity of regulation created by Congress in enacting ERISA, was based on a fundamental misunderstanding of the policies of Congress that underlie ERISA, and will have a profound effect on defrauded ERISA plans in their attempt to recoup plan losses.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals of the State of Oregon, filed on March 31, 1993, is reported at 119 Or.App. 91, 849 P.2d 1150 and is reproduced at Appendix ("App.") 1-4. The Supreme Court of Oregon denied review on August 24, 1993, which decision is reported at 317 Or. 486 and is reproduced at App. 5. The opinions of the trial court are reproduced at App. 6-9.

JURISDICTION

This action was filed in the Circuit Court, Multnomah County, Oregon. On three separate occasions, the trial court rendered judgment in favor of petitioner on January 27, 1992, April 2, 1992, and May 1, 1992, permitting petitioner to garnish certain employee disability benefits in order to satisfy a judgment for fraud rendered by the United States District Court for the Central District of California on May 28, 1991. The federal trial court had jurisdiction over this action pursuant to section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).[2] Respondent appealed the state court garnishment order to the Court of Appeals of Oregon. The state appellate court reversed the trial court garnishment order on March 31, 1993. The Supreme Court of Oregon denied discretionary review on August 24, 1993. This Petition is being filed within the 90-day period following entry of that order pursuant to Sup. Ct. R. 13.1 and 13.3. This Court has jurisdiction pursuant to 28 U.S.C. § 1257 because the validity of a state statute is drawn in question on the ground of its being repugnant to the laws of the United States.

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[2] ERISA, section 502(e)(1) [29 U.S.C. § 1132(e)(1)] provides as follows:

> Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

STATUTES INVOLVED

This case involves sections 502(a) and 514(a) of ERISA, 29 U.S.C. §§ 1132(a), 1144(a)[3] and Or. Rev. Stat. §§ 23.160(1)(j)(C) and 743.050.[4]

STATEMENT OF THE CASE

A. Statement of Facts

From 1980 through 1984, Standard paid defendant approximately $200,000 in disability benefits, including a substantial lump sum payout of benefits for the duration of defendant's expected life. The benefits were paid under an ERISA plan known as the IEE Plan. Standard paid these benefits in reliance on defendant's representations that he was totally disabled and that he was not engaged in any occupation, work, or employment for wage or profit. The defendant's representations were fraudulent.

As found by the federal district court,[5] in January, 1980, at a time when defendant was receiving monthly disability benefits from Standard under the IEE Plan, defendant became employed by Master Plating, Inc. and became a participant in a disability plan known as the Master Plating Plan. The Master Plating Plan became funded by a policy of insurance issued by Standard. In 1989, defendant made a claim for, and was awarded, disability benefits under the Master Plating Plan. In the course of re-

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[3] The text of these statutes is set out verbatim at App. 25 and App. 26, respectively.

[4] The text of these statutes is set out verbatim at App. 27 and App. 28, respectively.

[5] The federal district court opinion and judgment are attached at App. 10-24.

viewing defendant's claim for benefits, Standard learned that defendant had been working at Master Plating during the time period for which he received disability benefits under the IEE Plan and that defendant had obtained benefits under the IEE Plan by fraud and deceit.

Pursuant to ERISA, Standard filed suit against defendant to obtain restitution of said benefits in the United States District Court for the Central District of California. On or about May 28, 1991, judgment was entered in favor of Standard for over $360,000.

B. Decisions of the Courts Below

In order to collect on its fraud judgment, Standard registered the judgment in Oregon and attempted to garnish the benefits payable by Standard to Saklad under the Master Plating Plan.[6] Saklad claimed that his benefits were partially exempt from garnishment under a state statute which exempts from garnishment "payment in compensation of loss of future earnings". Or. Rev. Stat. § 23.160(1)(j)(C). On three separate occasions, the state trial court denied Saklad's exemption claims on the ground that the state garnishment exemption was preempted by ERISA. *See* App. 6-9.

Saklad appealed the trial court decisions. On March 31, 1993, the Court of Appeals of Oregon reversed the trial court decisions and held that the state garnishment exemption was not preempted by ERISA. *See* App. 1-4.

The Oregon Court of Appeals, like other courts, relied on but misread *Mackey v. Lanier Collections Agency &*

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[6] The judgment was registered in Oregon because Standard is an Oregon domiciliary insurance company headquartered in Portland, Oregon. Saklad's benefits were issued from Oregon.

Service, Inc., 486 U.S. 825 (1988). The Oregon appeals court held that congressional silence concerning garnishment of ERISA welfare benefits "acknowledged and accepted various state practices concerning garnishment, *including the practice of refusing garnishment*". *See* App. 3 (emphasis added). While *Mackey* held that collection of money judgments was a matter left to the States, it did not hold that a State may prohibit the collection of an ERISA judgment won in federal court against a plan participant pursuant to ERISA's exclusive civil enforcement scheme.

The Oregon Court, like many other courts, also misread footnote 12 of *Mackey*, and concluded that a garnishment exemption statute was not preempted unless it singled out ERISA plans for special treatment. Because the Oregon exemption statute did not expressly mention ERISA or ERISA plans, the appellate court held that the state garnishment exemption was not preempted. The Oregon Court, like others, operated under the erroneous belief that *Mackey* altered the "relates to" test of ERISA.

Finally, the Oregon Court incorrectly held that a state garnishment exemption applicable to welfare benefits is not preempted because it does not relate to an ERISA plan, but merely relates to plan benefits.

Standard filed its petition for review with the Supreme Court of Oregon. Review was denied on August 24, 1993.[7]

[7] After the Oregon Supreme Court denied review, Standard filed a separate action against Saklad under ERISA pursuant to § 502(a)(3), seeking to coordinate the benefits payable to Saklad under the Master Plating Plan with the benefits already received by Saklad under the IEE Plan as well as for equitable setoff under federal common law. This action is pending in the United States District Court for the Central District of California.

REASONS FOR GRANTING THE WRIT

A. This Case Presents Important Questions Of Federal Law Concerning The Employee Retirement Income Security Act.

This Court has repeatedly acknowledged the importance of issues arising under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA") with regard to: (1) preemption of state law; (2) the exclusivity of ERISA's civil enforcement scheme; and (3) the uniform regulation of employee benefit plans. *See, e.g., Ingersoll-Rand Company v. McClendon*, 498 U.S. 133 (1990); *FMC Corporation v. Holliday*, 498 U.S. 52 (1990); *Mackey v. Lanier Collections Agency & Service, Inc.*, 486 U.S. 825 (1988); *Ft. Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). This particular case presents important questions in all of these areas because the Court below misread and misapplied the preemption test as set forth in ERISA. In so doing, the Oregon Court denied an effective remedy to a defrauded ERISA plan, frustrating collection of a judgment won pursuant to ERISA's exclusive civil enforcement scheme, and thus making a sham of the uniform regulation of employee benefits. Moreover, the Oregon Court of Appeals decision is one of numerous cases causing confusion and conflict between various state and federal courts regarding application of the "relates to" test set forth in ERISA.

ERISA contains an express preemption provision which states that ERISA supersedes all State laws that "relate to" any employee benefit plan. 29 U.S.C. § 1144(a). This Court has stated on several occasions that the preemption

provision of ERISA is extremely broad. *See, e.g., Pilot Life*, 481 U.S. 45-46 ("the express pre-emption provisions of ERISA are deliberately expansive"); *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85 (1983) ("the breadth of [29 U.S.C. § 1144(a)'s] pre-emptive reach is apparent . . . ."). Furthermore, because Congress used the phrase "relate to" in its broad sense, this Court has "emphasized that the pre-emption clause is not limited to 'state laws specifically designed to affect employee benefit plans.' " *Pilot Life*, 481 U.S. at 47-48. *Accord, Shaw*, 463 U.S. at 98 (pre-emption clause should not "be interpreted to pre-empt only state laws dealing with the subject matters covered by ERISA—reporting, disclosure, fiduciary responsibility, and the like.")

This Court has also recognized that a primary concern of Congress in enacting ERISA was the uniform regulation of employee benefit plans. Congress used "deliberately expansive" language in ERISA's preemption clause which was "designed to 'establish pension plan regulation as exclusively a federal concern' ". *Pilot Life*, 481 U.S. at 46 (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981)).

Nowhere did Congress more clearly demonstrate its desire for uniform regulation of employee benefit plans than in its enactment of ERISA's detailed civil enforcement scheme. This Court has stated that the civil enforcement scheme "is one of the essential tools for accomplishing the stated purposes of ERISA". *Pilot Life*, 481 U.S. at 52. These detailed provisions constitute "a comprehensive civil enforcement scheme". *Id.* at 54. In order to further the purpose of uniformly regulating employee benefit plans, this Court has held that "[t]he deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of

remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive". *Id.* Thus, states are prohibited from supplementing or detracting from these remedies. *See, e.g., Pilot Life, supra* (state claim for bad faith is preempted); *Metropolitan Life v. Taylor, supra* (state tort and breach of contract claims are preempted); *Ingersoll-Rand v. McClendon, supra* (state wrongful discharge claim preempted by ERISA).

Despite this Court's consistent reasoning regarding the breadth of ERISA preemption, the exclusive nature of ERISA's civil enforcement scheme, and the uniform regulation of employee benefit plans, this Court's decision in *Mackey v. Lanier Collections Agency & Service, Inc.*, 486 U.S. 825 (1988), has been the subject of conflicting interpretations in federal and state courts. Two such matters are at issue in this case. *First*, courts have split over the extent to which the state laws regarding the collection of money judgments are preempted by ERISA, particularly where they create substantive rights in welfare benefit plan debtors not recognized by ERISA and in conflict with ERISA's civil enforcement scheme. *Compare Iron Workers Pension Fund v. Terotechnology*, 891 F.2d 548 (5th Cir.) *cert. den.* 497 U.S. 1024 (1990) and *CSCAC v. El Capitan Development Co.*, 53 Cal.3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 *cert. den.* 112 S.Ct. 430 (1991) *with* the decision at issue in this case. *Second*, there is substantial confusion over the breadth of the "relates to" test and what type of "express reference" to ERISA plans is necessary for a state law to be preempted by ERISA. *Compare Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9*, ____ F.3d ____, 1993 U.S. App. Lexis 28698 (10th Cir. November 4, 1993) and *Heitkamp v. Dyke*, 943 F.2d 1435 (5th Cir. 1991) *with* the decision at issue in this case.

It is important for the Court to clarify these issues. Numerous state and federal courts, including the Court below, have misread and misapplied ERISA's preemption provision by failing to find state laws preempted even though they "relate to" employee benefit plans. In the case at hand, the Oregon Court held that a state garnishment exemption applicable to ERISA disability benefits was not preempted. If this interpretation of ERISA's preemption provision is allowed to stand, it will result in defrauded employee benefit plans being denied an effective remedy for judgments won pursuant to ERISA's civil enforcement scheme. It will also allow state law, rather than federal law, to govern the viability of ERISA judgments, vitiating ERISA's exclusive civil enforcement scheme and eradicating the uniform regulation of employee benefit plans envisioned by Congress.[8]

B. This Court Should Resolve The Conflict Between The Oregon Court Of Appeals On The One Hand And The Fifth Circuit And The California Supreme Court On The Other Hand Regarding Whether ERISA Preempts A State Law Which Creates Substantive Rights In Third Parties Not Recognized By ERISA And That Conflict With ERISA's Exclusive Civil Enforcement Scheme.

The Court below erroneously preserved a state anti-garnishment exemption from preemption where the state law created substantive rights in third parties which are

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[8] If state garnishment exemptions are not preempted by ERISA, regulation concerning the satisfaction of judgments obtained pursuant to ERISA's exclusive civil enforcement scheme will not be uniform. *Compare* Ind. Code § 34-2-28-1 (no specific garnishment exemption for disability benefits) *with* Col. Rev. Stat. 13-54-104 (limited garnishment exemption for disability benefits) and Fla. Stat. ch. 222.18 (general garnishment exemption for disability benefits).

not recognized by ERISA and which are inconsistent with ERISA's exclusive civil remedy scheme. The decision by the Oregon Court of Appeals is in conflict with decisions by the Fifth Circuit in *Iron Workers Pension Fund v. Terotechnology*, 891 F.2d 548 (5th Cir.) *cert. den.* 497 U.S. 1024 (1990) and the California Supreme Court in *CSCAC v. El Capitan Development Co.*, 53 Cal.3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 *cert. den.* 112 S.Ct. 430 (1991).

In *Mackey v. Lanier Collections*, this Court held that a general state garnishment statute was not preempted. This holding was premised in part on the fact that the state law was merely a procedural mechanism for the collection of money judgments and did not create any substantive rights. The Court noted:

> [U]nder Georgia law (at least), garnishment is a 'procedural' mechanism for the enforcement of judgments. Georgia's statute that provides for garnishment creates no substantive causes of action, no new bases for relief, or any grounds for recovery; the Georgia garnishment law does not create the rule of decision in any case affixing liability. Rather under Georgia law, post-judgment garnishment is nothing more than a method to collect judgments otherwise obtained by prevailing on a claim against the garnishee. See Ga. Code Ann. § 18-4-60 (1982).

Mackey, 486 US at 834, n. 10. In other words, if state garnishment statutes are merely procedural in nature and do not conflict with the substantive provisions of ERISA, they are not preempted under section 514(a) of ERISA. To hold otherwise would mean that ERISA plans and their fiduciaries would have no means of collecting on judgments. *Id.* On the other hand, *Mackey* should not be interpreted to mean that a garnishment exemption statute which creates both procedural and substantive rights, and which conflicts with ERISA's civil enforcement scheme,

is not preempted. In this case, the state statute, rather than being a convenient method to collect a money judgment, actually frustrates an ERISA fiduciary's obligation to recoup monies fraudulently taken from the plan.

Relying on *Mackey*, the Fifth Circuit and the California Supreme Court have held that state laws which created substantive rights in third parties not otherwise recognized by ERISA were preempted. In *Iron Workers* and *El Capitan*, the Fifth Circuit and the California Supreme Court respectively dealt with the issue of whether state statutes creating real property liens in favor of pension plans to assure payment of contributions by the employer were preempted by ERISA. In each case, the court concluded that such a lien created substantive rights not otherwise available under the civil enforcement scheme of ERISA and thus was preempted. In *Iron Workers*, the Fifth Circuit held:

> [T]he lien statutes involved do more than provide remedies for collecting judgments; they create substantive rights . . . . The Private Works Act creates a substantive right against the property owner that is not created by ERISA, and goes beyond being merely a means of enforcing a judgment.

891 F.2d at 555-556. Similarly, in *El Capitan*, the California Supreme Court held:

> [S]ection 3111 cannot be upheld under *Mackey* as it creates a new substantive right against the property of a third party that is not created by ERISA and, thus, goes beyond being a mere means of enforcing a judgment.

811 P.2d at 304.

The decision of the Oregon Court in this case conflicts with these decisions. All three are based on the procedural/substantive distinction enunciated by this Court in

Mackey. *Mackey* allows garnishment statutes in general to survive preemption since they are mere procedural mechanisms to collect money judgments. However, exemptions from a general garnishment statute affect these procedural rights in a substantive manner. This state law exemption creates a substantive right for the plan beneficiary by extending anti-alienation protection to welfare benefits—a limitation that Congress chose only to impose on ERISA pension benefits. *Mackey*, 486 U.S. at 836. As such, the state law is preempted by ERISA. Because the Oregon Court of Appeals decision held otherwise, it directly conflicts with the decisions in *Iron Workers* and *El Capitan* as well as with this Court's decision in *Mackey*.

The state law exemption also obstructs an ERISA plan's right "to sue", which implies a right to collect on money judgments. *Mackey*, 486 U.S. at 832. This frustrates congressional intent that ERISA's civil enforcement scheme be the exclusive means of regulating and enforcing obligations under employee benefit plans. To allow a state to effectively refuse to enforce a judgment obtained pursuant to ERISA's civil enforcement scheme, whether for fraud, overpayment, or subrogation, would give states unfettered discretion to override federal law. The Courts in *Iron Workers* and *El Capitan* understood that the states could not supplement nor detract from ERISA's civil enforcement scheme. Thus, they struck down statutes which provided supplemental substantive enforcement mechanisms to those available to benefit plans under ERISA. By allowing a substantive right which essentially prevents the enforcement of a judgment obtained under ERISA's exclusive civil enforcement scheme, the Oregon Court of Appeals decision directly conflicts with the Fifth Circuit decision in *Iron Workers* and the California Supreme Court decision in *El Capitan*, as well as with this Court's decision in *Mackey*.

This Court should resolve this conflict. To fail to do so will only add to the existing confusion regarding the correct interpretation of *Mackey*, will subject employee benefit plans to inconsistent substantive regulation by the states, and result in the vitiation of the right of plans and their fiduciaries to utilize the civil enforcement scheme set forth in ERISA. While garnishment is a valid area of state concern, it is a matter of federal concern when a state garnishment *exemption* impacts the civil enforcement scheme of ERISA and the right of ERISA plans to sue and collect a money judgment pursuant to that scheme, particularly given the fact that there are millions of welfare benefit plan participants.[9] To alleviate the conflicting decisions in this area, this Court should issue a writ of certiorari.

C. This Court Should Resolve The Conflict Between The Oregon Court of Appeals And The Tenth Circuit As Well As The Confusion And Uncertainty Among State And Federal Courts Regarding What It Means For A State Law To Make "Reference To" ERISA Plans For Preemption Purposes.

The Oregon Court of Appeals erroneously held that a state antigarnishment exemption which was applicable both to ERISA and non-ERISA benefits and plans, was not preempted because the exemption did not single out ERISA plans by "expressly referring" to ERISA. This decision is completely at odds with the recent decision

[9] According to the Amicus Brief of the United States in *Mackey v. Lanier*, focusing only on multiemployer welfare plans (other than life and health insurance plans), the Department of Labor estimated in 1981, that there were over 2,000 such plans covering in excess of six million participants. These figures were tabulated from annual reports filed with the Department of Labor as required by ERISA, §§ 103-104, 29 U.S.C. §§ 1023-1024.

of the Tenth Circuit in *Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9, supra.* These two decisions are the latest in a long line of state and federal court decisions which have propounded conflicting interpretations of ERISA's preemption clause and the breadth of the "relates to" test.

This Court has repeatedly employed a broad definition in determining whether a law "relates to" an employee welfare benefit plan. According to an early ERISA case decided by this Court, a state law "relates to 'a benefit plan . . . if it has a connection with *or* reference to such a plan.' " *Shaw v. Delta Airlines*, 463 U.S. at 96-97 (emphasis added).[10]

Yet, despite a consistent line of authority from this Court, there is widespread confusion over the holding in *Mackey*. This confusion has taken numerous forms. It has arisen in the application of the preemption standard based on a determination of what it means for a state law to "make reference to" ERISA plans. Some courts have concluded that a state law "makes reference to" ERISA plans where it has a decided impact on such plans. *See, e.g., Guidry v. Local No. 9, supra*; *Heitkamp v. Dyke*, 943 F.2d 1435 (5th Cir. 1991). Others hold that a state law does not "make reference to" ERISA plans unless the language of the state law expressly refers to ERISA and/or ERISA plans. *See, e.g.*, the decision rendered by the court below. Still others seem to believe that this Court intended to expand the "relates to" test first set forth in *Shaw*. *See* discussion in *Heitkamp v. Dyke*, 943 F.2d at 1448 n.33 ("The language in *Mackey* is different

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[10] *See also Pilot Life v. Dedeaux*, 481 U.S. at 47; *Ingersoll-Rand Company v. McClendon*, 498 U.S. at 139; *FMC Corp. v. Holliday*, 498 U.S. at 58.

from the language in *Shaw* . . . Some commentators have argued that the language in *Mackey* expands ERISA's preemptive effect beyond that which the Court anticipated in *Shaw*"). It is clear from this confusion that this Court should give additional guidance in this area.

In *Mackey*, this Court struck down a state garnishment exemption law which expressly excepted ERISA plans from garnishment.[11] This Court held that a state law which "makes reference to" and which "singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures, is pre-empted . . . [t]he statute's express reference to ERISA plans suffices to bring it within the federal law's preemptive reach". 486 U.S. at 830. The Court upheld the State's general garnishment procedure statute, which did not expressly refer to ERISA plans but which was applicable to ERISA and non-ERISA benefits, preserving it from preemption under ERISA. The Court distinguished between preemption of the general garnishment statute and the exemption statute which expressly referred to ERISA plans:

> It is not incongruous to find that Ga. Code Ann. § 18-4-20 (Supp. 1987), which provides for garnishment of ERISA welfare benefit plans, escapes pre-emption under ERISA, while striking down § 18-4-22.1—an exception to the general state-law provision—as pre-empted. While we believe that state-law garnishment procedures are not pre-empted by § 514(a), we also conclude that *any* state law which singles out ERISA plans, by express reference, for special treatment is

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[11] The State law at issue in *Mackey* provided as follows:

> Funds or benefits of a pension, retirement, or employee benefit plan or program subject to the provisions of [ERISA], shall not be subject to the process or garnishment . . . .

Ga. Code Ann. § 18-4-22.1.

> pre-empted . . . It is this "singling out" that pre-empts the Georgia antigarnishment exception.

486 U.S. at 838 n. 12 (emphasis in original).

Although *Mackey* based its decision on the fact that a state law which "singles out ERISA plans by express reference" is preempted, *id.*, express reference has never been the sole basis for preemption. Unfortunately, footnote 12 of *Mackey* has caused many courts, such as the Court below, to ignore other decisions of this Court regarding preemption. These courts have relied solely on "express reference" as the test for preemption. Both before and after *Mackey*, this Court has found state laws to be preempted even where state laws did not specifically mention ERISA or ERISA plans. For example, in *FMC Corp. v. Holliday*, *supra*, this Court found a state law prohibiting subrogation to have a "reference to" and "connection with" ERISA plans and to be preempted although the state law was generally applicable to ERISA and non-ERISA benefits and did not make express reference to ERISA or ERISA plans. 498 U.S. at 59 ("Pennsylvania's antisubrogation law has a 'reference' to benefit plans . . . [and it] also has a 'connection' to ERISA benefit plans").

The decision below represents an incorrect reading of this Court's opinions in *Mackey* and *FMC*. The Oregon statute exempts "[a] payment in compensation of loss of future earnings" from garnishment. Although the statute applies to disability benefits payable under an employee welfare benefit plan, the appellate court held that the statute was not preempted because "[t]he only provision is that the state garnishment law cannot single out ERISA plans for special treatment". In other words, because the state law does not expressly mention ERISA plans and single them out for special treatment, even though it clearly regulates both ERISA and non-ERISA plans, in

the view of the Oregon Court of Appeals, the state law is not preempted. Not only does this holding misapply *Mackey*, but it misapplies and fails to recognize that the Oregon statute at issue is very similar to the Pennsylvania statute in *FMC*. In *FMC*, the statute did not specifically refer to ERISA or ERISA plans, but rather was a general statute applicable to both ERISA and non-ERISA plans.[12]

The Oregon Court of Appeals decision conflicts with the recent decision of the Tenth Circuit in *Guidry*, *supra*.[13] In *Guidry*, the union sought to garnish certain pension benefits after the benefits were paid to Guidry. Among other things, Guidry argued that the benefits were exempt from garnishment under a state statute which placed a cap on the amount of a debtor's "earnings" which could be subjected to garnishment. Like Oregon, the state law at issue in *Guidry* applied to employee benefits, defining "earnings" as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, avails of any pension or retirement benefits,

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[12] Section 1720 of Pennsylvania's Motor Vehicle Financial Responsibility Law, 75 Pa. Cons. Stat. § 1720 (1987) states:

> In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to . . . benefits . . . payable under section 1719.

Section 1719 refers to benefit payments by "[a]ny program, group contract or other arrangement".

[13] The Tenth Circuit decision in *Guidry* is an appeal following a remand by this Court in *Guidry v. Sheet Metal Workers Nat'l. Pension Fund*, 493 U.S. 365 (1991). This Court ruled that the anti-alienation provisions of ERISA applicable to pension plans superseded the union's claim for a constructive trust on benefits payable to Guidry because of Guidry's criminal misconduct against the union.

or deferred compensation plan". Col. Rev. Stat. 13-54-104. Although this statute did not expressly mention ERISA or ERISA plans, the Tenth Circuit apparently believed that the statute "expressly refer[red] to" ERISA plans because it implicitly encompassed such plans. (1993 U.S. App. Lexis 28698, at *38.) Citing *Mackey*, the Tenth Circuit held:

> The Colorado statute 'relates to' employee benefit plans because it expressly refers to such plans . . . [T]he garnishment exemption is preempted by ERISA 514(a) because it singles out ERISA benefits for special treatment. It is this singling out that preempts the Colorado anti-garnishment exception.

(*Id.* at *39-40.)

The Oregon holding also conflicts with decisions in several other courts. For example, in *Heitkamp v. Dyke*, 943 F.2d 1435 (5th Cir. 1991), the Fifth Circuit determined that a state statute "relate[d] to" ERISA plans where its language "encompassed" such plans. The case arose where a bankruptcy trustee objected to the exemption of a debtor's pension interest from the bankruptcy estate. The debtor's exemption was based on a state law which exempted from attachment, execution, and seizure for the satisfaction of debts the debtor's interest in any "stock bonus, pension, profitsharing, or similar plan". Citing *Mackey*, the Fifth Circuit noted that "absent an applicable exception, ERISA automatically preempts all state laws which specifically refer to ERISA benefit plans". *Id.* at 1448. Although the state statute did not expressly mention ERISA or ERISA plans, the Fifth Circuit held that the statute was "a state law which specifically refers to ERISA benefit plans", which conclusion was based on the Court's observation that the statutory exemption "clear-

ly encompasses ERISA-qualified benefit plans".[14] *Id. See also In re Shaker*, 137 B.R. 930 (W.D. Wis. 1992) (although the fact that a state exemption statute makes no express reference to ERISA or the Internal Revenue Code "could provide a strong argument that the [state] statute does not therefore 'relate to' ERISA in the sense prohibited by *Mackey* and its progeny . . . ERISA's broad preemptive reach is not merely triggered by an express reference to ERISA"); *Donald H. Hartvig, Inc. v. Kellas*, 113 B.R. 673, 678 (D. Ore. 1990) ("[e]ven though *Mackey* relied on an express reference to ERISA plans, the absence of an express reference does not necessarily mean the statute is not preempted").

Unfortunately, other courts have not followed the reasoning in *Guidry*, *Heitkamp*, and similar decisions. *See, e.g.*, *Plumber's Local 458 Holiday Vacation Fund v. Howard Immel, Inc.*, 151 Wis.2d 233, 445 N.W.2d 43 (1989) ("Wisconsin's construction lien law is a general statute without any specific reference to ERISA obligations", and thus is not preempted); *In re Bartlett*, 116 B.R. 1015, 1023 (S.D. Iowa 1990) ("[the Iowa pension exemption statute] cannot be construed as making any reference to ERISA or to attendant IRS provisions. Thus, it is not preempted by ERISA . . . ."); *In re Garvin*, 129 B.R. 598 (S.D. Ind. 1991) (noting that the courts are split over whether ERISA preempts state exemption statutes dealing with pension plans, the court held that a state law which does not expressly mention ERISA "makes no reference to ERISA whatsoever"); *In re Volpe*, 100 B.R. 840, 848 (W.D. Tex.)

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[14] Because ERISA does not preempt other *federal* laws, the Fifth Circuit held that the state statute was "saved" from preemption because the state law enforced federal goals under bankruptcy law. 943 F.2d at 1449-1450.

aff'd. 943 F.2d 1451 (5th Cir. 1991) (state law which makes passing mention of ERISA "makes reference to" ERISA under *Mackey*, but does not "have reference to" ERISA plans under *Shaw* because it does not purport to regulate the terms and conditions of an employee benefit plan nor does it affect the relationship between the principal ERISA entities). *Compare In re Martinez*, 107 B.R. 378, 380 (S.D. Fla. 1989) (even though a state exemption statute mentions the Internal Revenue Code provisions under which an ERISA plan is qualified, the state law is not preempted unless it creates a conflict between state law and the federal scheme of ERISA) *with Pitrat v. Garlikov*, 947 F.2d 419, 427 (9th Cir. 1991) ("by naming those sections of the I.R.C. which designate ERISA-qualified plans [a state exemption statute] clearly makes reference to ERISA plans" and is preempted).

This Court decided in *Patterson v. Shumate*, 112 S.Ct. 2242 (1992) that ERISA's prohibition of alienation of qualified pension plan benefits allows a debtor's pension plan interest to be excluded from the bankruptcy estate, thus mooting much of the preemption issue as it applies in the bankruptcy context with respect to ERISA *pension* plans. However, outside the bankruptcy context, preemption issues with respect to pension plans still linger. *See, e.g., Guidry, supra.* Furthermore, *Patterson* does not resolve any issues with respect to ERISA *welfare* plans and does not resolve the preemption issue raised herein. This issue arises in numerous contexts involving judgments awarded to welfare benefit plans pursuant to ERISA's civil enforcement scheme in areas such as fraud, mistaken overpayment, and subrogation.

These conflicting holdings demonstrate the ongoing confusion as to the breadth of ERISA's preemption clause and the "relates to" test. The confusion created by the

Oregon Court of Appeals decision and others destroys the full force and effect of ERISA's exclusive civil enforcement scheme by subjecting ERISA plans to a variety of conflicting court decisions, state and federal, regarding the breadth of the "relates to" test of ERISA. This Court should clarify the "relates to" test and the breadth of preemption and set right the misinterpretations of *Mackey*.

D. This Court Should Resolve the Conflict Between the Oregon Court Of Appeals And The Tenth Circuit Regarding Whether A State Garnishment Exemption "Relates To" An Employee Benefit Plan, Not Just Employee Benefits, And Is Preempted.

The Oregon Court of Appeals effectively held that a state garnishment exemption is not preempted because it never "relates to" an employee benefit plan, but only "relates to" employee benefits. According to the Oregon Court, this holding applies even where benefits have not yet been paid to the plan participant. The Tenth Circuit, on the other hand, held in *Guidry*, *supra*, that a state garnishment exemption is preempted because it "relates to" employee benefit plans, even where plan benefits are already paid and received by the plan participant.

The Oregon Court of Appeals stated that "[w]hether or not a check is garnished after administrative procedures are complete has nothing to do with a 'plan' . . . ." App. 4. In *Ft. Halifax*, this Court held that ERISA preemption only applies to state laws which "relate to" ERISA *plans*, and not to laws which only "relate to" plan *benefits*. According to the Oregon Court, a garnishment exemption statute can never "relate to" an ERISA plan because the garnishment process only "relates to" plan benefits. The Oregon Court apparently believed that once a plan calculates the amount of benefits due a participant,

an exemption protecting those benefits from garnishment no longer "relates to" the benefit plan. What the Oregon Court failed to recognize was that the plan paying benefits to Saklad was not the only plan affected by the exemption. Rather, the plan which had previously been defrauded by Saklad was also affected by the exemption, because the judgment it won pursuant to ERISA's civil enforcement scheme, which it sought to satisfy in Oregon, was completely frustrated by the exemption.

The Oregon decision directly conflicts with the Tenth Circuit's decision in *Guidry*. The issue in *Guidry* was whether the union could garnish plan benefits which were already paid and received by the participant. The Tenth Circuit held that a state garnishment exemption was preempted by ERISA. Responding to Guidry's argument that the statute did not "relate to" ERISA plans because the plan benefits were already paid out, the Tenth Circuit held:

> [T]he fact that this case is about paid benefits, and not about benefits in the plan, does not take the Colorado statute out of ERISA 514(a). A statute relating to benefits paid and received is a state law relating to an employee benefit plan.

(1993 U.S. App. Lexis 28698, at *40.) *But see Eickhoff v. Eickhoff*, 1993 Ga. Lexis 713 (Ga. October 25, 1993) (benefits are not protected by ERISA once they are received by the beneficiary).

The conflict between these two decisions is clear: while the Tenth Circuit holds that a state garnishment exemption "relates to" ERISA plans and is preempted even where benefits have already been paid to the participant, the Oregon Court of Appeals holds that a state garnishment exemption never "relates to" an ERISA plan. If the Oregon interpretation is allowed to prevail, state law

will effectively preempt federal law by eradicating ERISA's exclusive civil enforcement scheme, frustrating the attempts of defrauded plans to satisfy judgments won pursuant to that scheme. This is exactly the result Congress sought to avoid in enacting ERISA. Federal law, not state law, was intended to be supreme.

CONCLUSION

For the foregoing reasons, the petition should be granted and this Court should issue a writ of certiorari to review the decision and judgment of the Court of Appeals of the State of Oregon.

Respectfully submitted,

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November 18, 1993

APPENDICES

APPENDIX A

Filed: March 31, 1993

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

STANDARD INSURANCE COMPANY,

Respondent,

v.

JEROME W. SAKLAD,

Appellant.

(9108-05506; CA A73687)

Appeal from Circuit Court, Multnomah County.

Lee Johnson, Judge. (April 2, 1992, Order)

Gerald R. Pullen, Judge *pro tempore.* (January 27, 1992, Order)

Argued and submitted January 13, 1993.

Christopher F. McCracken, Portland, argued the cause for appellant. With him on the briefs were Stuart C. Harris and Davis Wright Tremaine, Portland.

James Ray Streinz, Portland, argued the cause for respondent. With him on the brief were Russell B. Weed and McEwen, Gisvold, Rankin & Stewart, Portland.

Before Deits, Presiding Judge, and Riggs and Durham, Judges.

RIGGS, J.

Defendant, judgment debtor, appeals from three orders denying three claims that his disability benefits are exempt from garnishment under ORS 23.160(1)(j)(C). At issue is whether the Employee Retirement Income Security Act (ERISA) preempts a state law which exempts proceeds

of disability benefits from garnishment. 29 USC § 1144(a). He also argues that his disability benefits are exempt under ORS 743.050, which exempts from garnishment proceeds of a health insurance policy. Finally, he argues that Standard engaged in a prohibited transaction under ERISA by garnishing the benefits paid by an ERISA plan for which it was also a fiduciary. We reverse and remand.

Defendant was a beneficiary of two disability policies issued by plaintiff. He defrauded plaintiff of over $250,000 under the first policy but was entitled to benefits under the second policy. After winning a judgment against defendant for fraud, plaintiff sought to garnish the benefits paid under the second policy. Plaintiff registered a judgment against defendant and sought to satisfy that judgment through a writ of continuing garnishment which garnished defendant's monthly disability payments under the second policy. The second policy was administered by an ERISA welfare plan for which plaintiff was a fiduciary.[1] The ERISA welfare plan filed three certificates of garnishee. In response to each certificate of garnishee, defendant filed a claim of exemption under ORS 23.160(1)(j)(C), which exempts from garnishment "payment in compensation of loss of future earnings." The court denied all three claims of exemption, holding that ORS 23.160(1)(j)(C) is preempted by ERISA.

With certain exceptions not applicable to this case, § 514(a) of ERISA preempts all state laws that "relate to any employee benefit plan." 29 USC § 1144(a). The

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[1] "Welfare plans" refers to plans providing health and disability insurance and other benefits with the exception of pension benefits. 29 USC § 1002(1). ERISA specifically prohibits garnishment of pension benefits, 29 USC § 1056(d), but is silent concerning the garnishment of welfare benefits.

supreme Court has repeatedly stated that ERISA's preemptive reach is broad. *See, e.g. Shaw v. Delta Air Lines, Inc.*, 463 US 85, 97, 103 S Ct 2890, 77 L Ed 2d 490 (1983). But that reach is not boundless.

Plaintiff argues that Oregon's anti-garnishment law, ORS 23.160(1)(j)(C), is preempted by ERISA under *Mackey v. Lanier Collections Agency*, 486 US 825, 100 L Ed 836, 108 S Ct 2182 (1988). *Mackey* involved two different Georgia laws. The first law prohibited garnishment of the benefits of ERISA welfare plans while permitting garnishment of benefits from non-ERISA plans. The first law was preempted because it gave differential treatment to ERISA plans. Specific reference to ERISA in a state law invariably leads to preemption. 486 US at 829. In contrast, ORS 23.160(1)(j)(C) does not treat ERISA plans differently from non-ERISA plans and so is not automatically preempted.

The second law in *Mackey* was a general garnishment statute which, once the first law was struck down, authorized garnishment of all employee welfare benefits. The Supreme Court held that congressional silence concerning garnishment of employee welfare plan benefits shows that Congress "acknowledged and accepted" the practice of garnishing ERISA welfare plan benefits under general garnishment statutes. 486 US at 837. Plaintiff argues that by "acknowledging and accepting the practice" Congress intended ERISA plan benefits to be subject to garnishment. Plaintiff misreads *Mackey*. It does not follow that by acquiescing in garnishment Congress mandated that practice. We understand *Mackey* to mean that the congressional silence concerning garnishment of ERISA welfare plans acknowledged and accepted various state practices concerning garnishment, including the practice of refusing garnishment. The only provision is that the state garnishment law cannot single out ERISA plans for special treatment.

Plaintiff next argues that:

> "preemption of ORS 23.160(1)(j)(C) provides for uniformity of treatment of ERISA benefits. If the Oregon statute is not preempted, disability benefits paid pursuant to an ERISA plan would be exempt in Oregon, but the same benefits would not be exempt in Georgia based upon the *Mackey* case."

Plaintiff incorrectly implies that ERISA mandates uniform treatment of ERISA *benefits*. ERISA mandates uniform treatment of ERISA *plans*.

> "ERISA's preemption provision does not refer to state laws relating to 'employee benefits' but to state laws relating to 'employee benefit *plans*.' * * * The words 'benefit' and 'plan' are used separately throughout ERISA, and nowhere in the statute are they treated as the equivalent of one another." *Fort Halifax Packing Co. v. Coyne*, 482 US 1, 7-8, 96 L Ed 2d 1, 107 S. Ct 2211 (1986).

"Benefit plans" refers to a set of administrative procedures including claims processing, benefit calculation, and pay out. 482 US at 9. Whether or not a check is garnished after administrative procedures are complete has nothing to do with a "plan" as that term was defined in *Fort Halifax*. The benefit/plan distinction made in *Fort Halifax* explains why *Mackey v. Lanier Collection Agency*, *supra*, permitted Georgia to regulate garnishment of benefits even though state regulation meant that ERISA benefits would be garnished via procedures that vary from state to state. If uniformity of garnishment procedures was a central regulatory concern of ERISA, *Mackey* would not have left garnishment of disability benefits up to the states.

Due to our disposition of the preemption issue, we do not reach defendant's other assignments of error.

Reversed and remanded.

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF OREGON

STANDARD INSURANCE COMPANY

Respondent/Petitioner

v.

JEROME W SAKLAD

Appellant/Respondent

AMERICAN COUNCIL OF LIFE INS

Amicus Curiae

ORDER
DENYING REVIEW

CA A73687
SC S40211

The Court has considered the petition for review and orders that it be denied.

DATE: August 24, 1993.

/S/ WALLACE P. CARSON, JR.
WALLACE P. CARSON, JR.
CHIEF JUSTICE

APPENDIX C

[Dated: January 27, 1992]

CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STANDARD INSURANCE COMPANY,

Plaintiff,

v.

JEROME W. SAKLAD,

Defendant.

Case No. 9108-05506

ORDER ON CLAIM OF EXEMPTION TO WRIT OF GARNISHMENT

This matter having come before the Court on plaintiff's Motion for Review of Defendant's Claim of Exemption to a garnishment by plaintiff of certain disability benefits being paid to defendant by Standard Insurance Company, and the Court having reviewed the file and a letter from the defendant dated January 6, 1991, and having heard argument on behalf of plaintiff, it is hereby

ORDERED that defendant's claim of exemption of the entire amount of disability benefits is denied on the grounds that any Oregon exemption for disability benefits is pre-empted by federal law, specifically the Employee Retirement Income Security Act of 1974; and it is

FURTHER ORDERED that the sum of $400 of the funds garnished is exempt as a one-time exemption under ORS 23.160(1)(k), which will not be available to defendant on any further garnishments by plaintiff; and it is

FURTHER ORDERED that of the funds deposited into Court by Standard Insurance Company pursuant to the garnishment and the exemption claim thereon that the Clerk of the Court is directed to pay $400 of these funds to the defendant, Jerome W. Saklad, and to pay the rest to plaintiff, Standard Insurance Company.

Dated this 27 day of January, 1992.

/S/ Gerald R. Pullen
CIRCUIT COURT JUDGE PRO TEM

Presented by:

James Ray Streinz, OSB 79410

CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STANDARD INSURANCE COMPANY,

Plaintiff,

vs.

JEROME W. SAKLAD,

Defendant.

Case No. 9108-05506

ORDER ON SECOND CLAIM OF EXEMPTION TO THE WRIT OF GARNISHMENT

This matter having come before the Court for hearing on March 5, 1992, on defendant's Claim of Exemption from a garnishment filed by plaintiff, this being defendant's Second Claim of Exemption, and the Court having reviewed the file, the Memorandum in Opposition to Claim of Exemption filed by Standard Insurance Company, and having heard the arguments of counsel for plaintiff and defendant, it is hereby

ORDERED that defendant's Claim of Exemption, including the claims based upon ORS 23.160(1)(j)(C) and ORS 743.050, is denied; and it is

FURTHER ORDERED that any funds deposited into Court by Standard Insurance Company pursuant to the garnishment and the exemption claim shall be returned to Standard Insurance Company as Plaintiff by the Clerk of the Court.

Dated this 2 day of April, 1992.

/S/ Lee Johnson
CIRCUIT COURT JUDGE

Presented by:
James Ray Streinz, OSB 79410

CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STANDARD INSURANCE COMPANY,

Case No. 9108-05506

Plaintiff,

ORDER ON THIRD CLAIM OF EXEMPTION TO WRIT OF GARNISHMENT

vs.

JEROME W. SAKLAD,

Defendant.

This matter having come before the Court for hearing on May 1, 1992, on defendant's claim of exemption from a garnishment filed by plaintiff, this being defendant's Third Claim of Exemption, and the Court having reviewed the file, the Memorandum in Opposition to Claim of Exemption filed by Standard Insurance Company, the Memorandum in Support of Claim of Exemption filed by defendant, and having heard the arguments of counsel for plaintiff and defendant, it is hereby

ORDERED that Defendant's Claim of Exemption is denied, specifically including each of the separate arguments raised in Defendant's Memorandum in Support of Claim of Exemption; and it is

FURTHER ORDERED that any funds deposited into Court by Standard Insurance Company pursuant to the garnishment and the exemption claim shall be returned to Standard Insurance Company as plaintiff by the Clerk of the Court.

Dated this 1 day of May, 1992.

/S/ Lee Johnson
CIRCUIT COURT JUDGE

APPENDIX D

[Dated: May 8, 1991]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STANDARD INSURANCE COMPANY, an Oregon corporation Plaintiff, v. JEROME W. SAKLAD, an individual, Defendant.	CASE NO. CV89-4048 RG(Tx) FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the testimony and documentary evidence presented at trial, this Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Standard is, and at the time of the filing of this action was, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business in the State of Oregon.

2. Saklad is, and at the time of the filing of this action was, a citizen of the United States domiciled in the State of California, residing in the County of Ventura.

3. Effective February 1, 1974, Standard issued Group Insurance Policy No. 330322 (the "IEE Policy") to Industrial Electronics Engineers, Inc. ("IEE"), providing long term disability income insurance coverage to persons insured thereunder.

4. The IEE Policy provided benefits pursuant to an employee benefit plan established and maintained by IEE subject to and governed by the terms of the Employee Retirement Income and Security Act ("ERISA") [29 U.S.C. Sections 1001 *et seq.*].

5. On May 1, 1978, Saklad became employed by Souriau, Inc. ("Souriau") as its marketing manager.

6. After becoming employed by Souriau, Saklad completed Standard's Group Insurance Enrollment Card for coverage under the IEE Policy.

7. Saklad became insured under the IEE Policy.

8. Under the IEE Policy, long term disability income benefits were payable to those covered employees who became totally disabled as defined in the IEE Policy and who otherwise complied with the terms and provisions of the IEE Policy.

9. Long term disability income benefits under the IEE Policy were payable in the amount of 66⅔% of the first $3,000 of the covered employee's basic monthly earnings, reduced by defined "Deductible Benefits."

10. The IEE Policy contained a one-month elimination period during which no benefits accrued.

11. During the elimination period and for the first 24 months thereafter, long term disability income benefits were payable under the IEE Policy only if the covered employee was unable to perform the substantial and material acts necessary to work with reasonable continuity in his regular occupation. Thereafter, benefits were payable only if the covered employee was unable to perform the substantial and material acts necessary to work with reasonable continuity in an occupation in which he might be reasonably expected to engage in view of his physical

capacity, his education, training or experience, and his station in life.

12. Also under the IEE Policy, no long term disability income benefits were payable for *any* period of time during which the covered employee was engaged in any occupation, work or employment for wage or profit unless such occupation, work or employment was part of an Approved Rehabilitation Program as defined under the IEE Policy, and approved in writing by Standard.

13. Saklad submitted a claim for long term disability income benefits under the IEE Policy, which was received by Standard on October 29, 1979.

14. In connection with his claim for long term disability income benefits under the IEE Policy, Saklad represented to Standard that he was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems, including pericarditis.

15. In connection with his claim for long term disability income benefits under the IEE Policy, Saklad further represented to Standard that he was not engaged in any occupation, work or employment for wage or profit.

16. In the case of a claim for total disability, Section 6.B. of the IEE Policy required the covered employee to furnish written proofs of continuance of total disability at intervals reasonably required by Standard.

17. Saklad signed and submitted to Standard written statements representing that he was disabled and not working on or about the following dates: October 17, 1979; February 5, 1980; June 27, 1980; August 22, 1980; January 6, 1981; February 25, 1981; June 1, 1981; September 6, 1981; and October 28, 1982.

18. In addition, Saklad made other written representations to Standard representing that he remained disabled and was not working on or about the following dates: January 3, 1981; August 6, 1981; December 9, 1981; September 20, 1982; November 1, 1982; September 19, 1983; October 2, 1983; March 22, 1984; and November 10, 1984.

19. The representations made by Saklad as described in paragraphs 14 through 18 above were false. The true facts were that Saklad was not totally disabled as he was engaged in an occupation, work or employment for wage or profit.

20. Saklad made the representations described in paragraphs 14 through 18 above with knowledge of their falsity.

21. Saklad made the representations described in paragraphs 14 through 18 above intending to induce Standard to act in reliance thereon.

22. Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad for the period August 24, 1979, through December 23, 1984.

23. Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad in the mistaken belief that Saklad was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems and was not engaged in any occupation, work or employment for wage or profit.

24. Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad in justifiable reliance upon Saklad's representations that he was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems and was not

engaged in any occupation, work or employment for wage or profit.

25. At the time Saklad made the representations that he was totally disabled under the terms of the IEE Policy due to Legionnaires' Disease and various other health problems and was not engaged in any occupation, work or employment for wage or profit, and at the time Standard approved Saklad's claim for long term disability income benefits under the IEE Policy and paid monthly benefits to Saklad, Standard believed Saklad's representations to be true. Had Standard known of the falsity of Saklad's representations, Standard would not have approved Saklad's claim for long term disability income benefits under the IEE policy nor would it have paid monthly benefits to Saklad.

26. The total amount of monthly benefits paid by Standard to Saklad for the period January 1, 1980, through December 23, 1984, was $117,234.

27. On September 20, 1982, Saklad wrote to Standard indicating that his doctors had advised him to leave the Southern California area for a warm, dry climate with clean air. In that letter, Saklad raised the subject of settling his claim for long term disability income benefits under the IEE Policy for a lump sum settlement.

28. On November 1, 1982, Saklad wrote to Standard indicating that at that time he no longer desired a lump sum settlement.

29. On September 19, 1983, Saklad wrote to Standard, again raising the possibility of a lump sum settlement and his desire to relocate to a different climate.

30. Standard responded to Saklad's requests for a lump sum settlement by discouraging settlement and advising Saklad to obtain the advice of counsel.

31. On October 2, 1983, Saklad wrote to Standard indicating that he had obtained the advice of counsel and that he desired a lump sum settlement.

32. On March 22, 1984, Saklad again wrote to Standard reiterating his request for a lump sum settlement and stating, "My doctors admit there will not be a reversal of my problems. My damage is permanent, so is my disability."

33. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad represented to Standard that he was totally disabled under the terms of the IEE Policy.

34. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad further represented to Standard that his total disability was on-going.

35. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad further represented to Standard that he was not engaged in any occupation, work or employment for wage or profit.

36. In connection with his request for a lump sum settlement of all future long term disability income benefits under the IEE Policy, Saklad further represented to Standard that he did not intend to engage in any occupation, work or employment for wage or profit in the future.

37. The representations made by Saklad as described in paragraphs 33 through 36 above were false. The true facts were that Saklad was not totally disabled as he had been, was and was planning to continue to be engaged in an occupation, work or employment for wage or profit.

38. Saklad made the representations described in paragraphs 33 through 36 above with knowledge of their falsity.

39. Saklad made the representations described in paragraphs 33 through 36 above intending to induce Standard to act in reliance thereon.

40. On or about December 7, 1984, Standard and Saklad entered into an Accord and Satisfaction Agreement in final settlement of Saklad's claim for disability benefits under the IEE Policy.

41. On December 24, 1984, Standard paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement.

42. Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement in the mistaken belief that Saklad was totally disabled under the terms of the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

43. Standard would not have entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement except for Standard's mistaken belief that Saklad was totally disabled under the terms of the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

44. Saklad was aware, or should reasonably have been aware, of Standard's mistaken belief that Saklad was totally disabled under the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

45. Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement in justifiable reliance on Saklad's representations that he was totally disabled under the terms of the IEE Policy, that Saklad's total disability was ongoing, that Saklad was not engaged and had not been engaged in any occupation, work or employment for wage or profit, and that Saklad did not intend to engage in any occupation, work or employment for wage or profit in the future.

46. On August 24, 1987, Standard received from Saklad a claim for long term disability income benefits under another policy of group long term disability income insurance, this one issued to The Master Plating, Inc. (the "Master Plating Policy").

47. Master Plating was a family business, owned and operated by members of the Saklad family.

48. On a Long Term Disability Claim Employer's Statement signed by Saklad on August 17, 1987, and submitted by Saklad to Standard in connection with his 1987 claim for benefits under the Master Plating Policy, Saklad gave January 1980 as the date he was employed by Master Plating.

49. Also in connection with his 1987 claim for benefits under the Master Plating Policy, on August 18, 1987,

Saklad signed and submitted to Standard a Long Term Disability Claim Employee's Statement indicating that during the period January 1980, through November 1985, Saklad was employed as a sales and marketing vice president, with duties of outside sales and product marketing at a salary of $650 per week.

50. In 1988, Saklad submitted another claim for long term disability income benefits under the Master Plating Policy.

51. In connection with Saklad's 1988 claim for benefits under the Master Plating Policy, on February 11, 1988, Saklad signed and submitted to Standard a Long Term Disability Claim Employee's Statement that stated that he was employed as vice president of sales and marketing from November 1980, through November 1985, with duties of outside sales and marketing at a salary of $650 per week.

52. In connection with Saklad's 1988 claim for benefits under the Master Plating Policy, Standard contacted Max Van daaleen Wetters, vice president of Master Plating, who confirmed in a telephone conversation that Saklad was employed by Master Plating in January 1980.

53. Also in connection with his 1988 claim for benefits under the Master Plating Policy, Saklad provided Standard with a copy of his resume which stated that he was employed from 1980 to 1985 as vice president, sales at Master Plating at a salary of $24,000 to $36,000 per year.

54. Also in connection with his 1988 claim for benefits under the Master Plating Policy, Saklad submitted to Standard a Long Term Disability Claim Employer's Statement signed by Claudette LeMay, Office Manager of Master Plating, that indicated that Saklad was employed by Master Plating in January 1980.

55. In February 1989, Saklad made another claim for long term disability income benefits under the Master Plating Policy.

56. In connection with his 1989 claim for benefits under the Master Plating Policy, on February 11, 1989, Saklad signed and submitted to Standard a Long Term Disability Claim Employee's Statement that indicated that he was employed from November 1980, through November 1985, as a vice president of sales and marketing, with duties of outside sales and marketing at a salary of $650 per week.

57. In connection with his 1989 claim for benefits under the Master Plating Policy, Saklad submitted a Long Term Disability Claim Employer's Statement indicating that Saklad was employed by Master Plating on January 1, 1980.

58. In light of this new information, Standard commenced an investigation to determine whether any false statements, misrepresentations or omissions had been made by Saklad in connection with his claim for long term disability income benefits under the IEE Policy or the Accord and Satisfaction Agreement.

59. Saklad was engaged in an occupation, work or employment for wage or profit during the period that Standard paid him benefits under the IEE Policy.

60. Saklad performed sales and marketing, management and various other services for Master Plating from at least January 1, 1980, through 1984 and beyond.

61. Saklad was compensated for services he performed for Master Plating during the period that Standard paid him benefits under the IEE Policy.

62. At times, Saklad was compensated for the services he performed for Master Plating in the form of a weekly check payable to Saklad personally.

63. At other times, Saklad was compensated for the services he performed for Master Plating in the form of a weekly check payable to an entity known as the Marilyn Morgan Company.

64. Marilyn Morgan is a name that has been used by Saklad's present wife.

65. It is most probable that Marilyn Morgan Company never provided any services to Master Plating, and the checks made payable to Marilyn Morgan Company by Master Plating were for the purpose of compensating Saklad for services he performed for Master Plating.

66. Saklad also participated in other work and employment, including activities connected with an entity known as The Palma Properties, during the period that Standard paid him long term disability income benefits under the IEE Policy.

67. Even though Saklad represented to Standard that he was not working during the period that Standard paid him long term disability income benefits under the IEE Policy, Saklad represented to others, including health and life insurers, that he was working during that period in order to obtain insurance coverage and benefits.

68. Saklad did not tell Standard that he was engaged in any occupation, work or employment for wage or profit during the period that Standard paid long term disability income benefits to Saklad under the IEE Policy.

69. Saklad did not tell Standard that he was performing services for Master Plating during the period that

Standard paid him long term disability income benefits under the IEE Policy.

70. Saklad did not tell Standard that he was compensated for the services he performed for Master Plating during the period that Standard paid him benefits under the IEE Policy.

71. Saklad did not tell Standard that he was engaged in other work and employment, including activities connected with an entity known as The Palma Properties, during the period that Standard paid him long term disability income benefits under the IEE Policy.

72. None of Saklad's activities was ever approved by Standard in writing or otherwise as an Approved Rehabilitation Program under the IEE Policy.

CONCLUSIONS OF LAW

1. Any and all findings of fact included in the Conclusions of Law are hereby adopted as part of the Findings of Fact. Any and all conclusions of law included in the Findings of Fact are hereby adopted as part of the Conclusions of Law.

2. This action arises under the provisions of ERISA, 29 U.S.C. Sections 1001 *et seq.*, and is subject to the jurisdiction of this Court pursuant to 28 U.S.C. Section 1331.

3. In addition, the matter in controversy exceeds the sum of $50,000, exclusive of interest and costs, and this action therefore is further subject to the jurisdiction of this Court pursuant to 28 U.S.C. Section 1332(a)(1).

4. Venue properly lies in the Central District of California pursuant to 28 U.S.C. Sections 1391(a) and (b).

5. Under the IEE Policy, Saklad was not entitled to the long term disability income benefits paid to Saklad by Standard during the period January 1, 1980, through December 23, 1984.

6. Standard has been damaged in the sum of $117,234 in that Standard paid long term disability income benefits to Saklad during the period January 1, 1980, through December 23, 1984, under a mistake of fact.

7. Standard has been damaged in the sum of $117,234 in that Standard paid long term disability income benefits to Saklad during the period January 1, 1980, through December 23, 1984, in justifiable reliance upon fraudulent misrepresentations made by Saklad.

8. It would be unjust and inequitable to allow Saklad to retain the long term disability income benefits paid to Saklad by Standard during the period January 1, 1980, through December 23, 1984.

9. Standard is entitled to the return of all benefits paid to Saklad under the IEE Policy during the period January 1, 1980, through December 23, 1984, in the amount of $117,234, plus interest at the legal rate.

10. Prejudgment interest on said sum of $117,234 through April 19, 1991, is in the amount of $124,043.

11. Saklad was not entitled to the $80,000 paid to him by Standard under the Accord and Satisfaction Agreement.

12. Standard has been damaged in the sum of $80,000 in that Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement under a mistake of fact.

13. Standard has been damaged in the sum of $80,000 in that Standard entered into the Accord and Satisfaction Agreement with Saklad and paid to Saklad the sum of $80,000 pursuant to the Accord and Satisfaction Agreement in justifiable reliance upon fraudulent misrepresentations made by Saklad.

14. It would be unjust and inequitable to allow Saklad to retain the $80,000 paid by Standard pursuant to the Accord and Satisfaction Agreement.

15. Standard is entitled to rescind the Accord and Satisfaction Agreement.

16. Standard is entitled to the return of the $80,000 paid to Saklad pursuant to the Accord and Satisfaction Agreement, plus interest at the legal rate from and after December 24, 1984.

17. Prejudgment interest on said sum of $80,000 through April 19, 1991, is in the amount of $45,881.

18. Judgment on the Complaint shall be entered in Standard's favor and against Saklad.

19. Standard shall be awarded the sum of $367,158, plus post judgment interest at the legal rate.

20. Standard shall recover its costs of suit herein.

21. Judgment shall be entered as provided herein.

/S/ Richard A. Gadbois, Jr.
RICHARD A. GADBOIS, JR.
United States District Judge

DATED: May 8, 1991

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

STANDARD INSURANCE COMPANY, an Oregon corporation Plaintiff, v. JEROME W. SAKLAD, an individual, Defendant.	CASE NO. CV 89-4048 RG (Tx) JUDGMENT THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)

This action came on for trial before the Court, the Honorable Richard A. Gadbois, Jr., District Judge, Presiding, on April 25 and 30, and on May 1 and 2, 1991. The issues having been duly tried, findings of fact and conclusions of law and an Order for Judgment having been filed on May 8, 1991,

IT IS ORDERED AND ADJUDGED that the plaintiff Standard Insurance Company recover of the defendant Jerome W. Saklad the sum of $367,158, with interest thereon at the rate of 6.07% as provided by law from the date of this Judgment, and its costs of suit in the amount of $_____.

DATED: May 28, 1991

/S/ Richard A. Gadbois, Jr.
Honorable Richard A. Gadbois, Jr.
Judge of the United States District Court

APPENDIX E

ERISA, § 502(a), 29 U.S.C. § 1132(a)

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (B) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (c)(2) or (i) or (1) of this section.

APPENDIX F

ERISA, § 514(a), 29 U.S.C. § 1144(a)

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

APPENDIX G

Or. Rev. Stat. § 23.160(1)(j)(C)

23.160 Leviable property generally; selectable exemptions. (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor or the agent of the judgment debtor at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to the judgment debtor, the following property, or rights or interest therein of the judgment debtor, except as provided in ORS 23.220, shall be exempt from execution:

. . .

(j) The debtor's right to receive, or property that is traceable to:

. . .

(C) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

APPENDIX H

Or. Rev. Stat. 743.050

Exemption of proceeds, health insurance.

Except as may otherwise be expressly provided by the policy, the proceeds or avails of all health insurance policies and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance policies, issued before, on or after June 8, 1967, shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for the use of the beneficiary.